

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Case No. 18-cv-1584 (JNE/SER)

Terry Nelson and Clark Anderson,  
*as Trustees of the Painters and Allied  
Trades District Council No. 82 Health  
Care Fund, and the District Council  
82 Painting Industry Pension Fund,*  
Terry Nelson and Mark Rislund,  
*as Trustees of the Painters and Allied  
Trades District Council 82 STAR Fund,*  
Terry Nelson and Bill Sullivan,  
*as Trustees of the Painters and Allied  
Trades DC 82 Defined Contribution  
Pension Plan, Timothy Maitland,  
as Fiduciary of the International Painters  
and Allied Trades Industry Pension Fund,  
the Finishing Trades Institute, and the  
Painters and Allied Trades Labor  
Management Cooperation Initiative,*  
Terry Nelson and Robert Swanson,  
*as Trustees of the Finishing Trades  
Institute of the Upper Midwest Trust Fund,  
The Painters and Allied Trades District  
Council No. 82 Health Care Fund, the  
District Council 82 Painting Industry  
Pension Fund, The Painters and Allied  
Trades District Council 82 STAR Fund,  
the Painters and Allied Trades DC 82  
Defined Contribution Pension Plan, the  
International Painters and Allied Trades  
Industry Pension Fund, the Finishing  
Trades Institute, and the Painters and  
Allied Trades Labor Management  
Cooperation Initiative, and the Finishing  
Trades Institute of the Upper Midwest  
Trust Fund,*

**ORDER**

Plaintiffs,

v.

Salomon Garcia, *Individually and doing*

*business as Valley Drywall,*  
Valley Drywall, Inc.,

Defendants.

On March 5, 2019, the Honorable Steven E. Rau, United States Magistrate Judge, issued a Report and Recommendation (“R&R”) recommending that the Court grant Plaintiffs’ Second Motion for Entry of Default Judgment and award Plaintiffs \$19,178.93 in unpaid contributions, liquidated damages, and legal costs. Defendants did not object to the R&R during the permitted time period. The Court has conducted a de novo review of the record. *See* 28 U.S.C. § 636(b)(1); D. Minn. LR 72.2(b).

As set forth in the R&R, Plaintiffs request \$4,236.50 in legal fees and costs. The Court declines to award Plaintiffs the entirety of that amount. When a court awards a default judgment against a defendant for contributions owed under a collective bargaining agreement, ERISA provides that the court shall award “reasonable attorney’s fees and costs of the action.” 29 U.S.C. § 1132(g)(2)(D). “Just what is a reasonable attorneys’ fee is a matter peculiarly within the district court’s discretion.” *Greater Kansas City Laborers Pension Fund v. Thummel*, 738 F.2d 926, 931 (8th Cir. 1984) (discussing reasonable attorneys’ fees under § 1132(g)(2)). Here, \$1,397.50 of Plaintiffs’ requested fee award is attributable to correcting inconsistencies in Plaintiffs’ Complaint and motion papers.<sup>1</sup> These fees, necessitated by defects in Plaintiffs’ own filings, are not reasonable.

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<sup>1</sup> This Court denied Plaintiffs’ First Motion for Entry of Default Judgment because “Plaintiffs did not consistently identify themselves in their complaint and motion papers.” *See* Order, ECF No. 17. Plaintiffs now report \$4,236.50 in total legal fees and costs, which is \$1,397.50 more than the \$2,839.00 Plaintiffs reported in connection with their First Motion for Entry of Default Judgment. *Compare* Lawrie Aff., Nov. 28, 2018, ECF No. 22, *with* Lawrie Aff., July 31, 2018, ECF No. 13. Thus, Plaintiffs incurred an additional \$1,397.50 in fees to cure the defects in their first motion.

The Court thus awards Plaintiffs \$2,839.00 in legal fees and costs. In total, then, the Court awards Plaintiffs \$17,781.43 in unpaid contributions, liquidated damages, and legal costs, which is \$1,397.50 less than the total amount recommended by the R&R.

The Court adopts the recommended disposition in all other respects for the reasons stated in the R&R. Based on the files, records, and proceedings herein, and for the reasons stated above, IT IS ORDERED THAT:

1. Plaintiffs' Second Motion for Entry of Default Judgment, ECF No. 18, is GRANTED IN PART, as set forth above.
  - a. Judgment in the amount of \$17,781.43 be entered against Defendants and in favor of Plaintiffs.

LET JUDGMENT BE ENTERED ACCORDINGLY

Dated: April 8, 2019

s/Joan N. Ericksen  
JOAN N. ERICKSEN  
United States District Judge